

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

97-CR-169-S

DAVID A. KRAUSE,

Defendant.

**GOVERNMENT'S MOTION FOR A
PROTECTIVE ORDER AND ORDER TO SEAL**

THE UNITED STATES OF AMERICA, by its attorney, William J. Hochul, Jr. United States Attorney for the Western District of New York (Paul J. Campana, Assistant United States Attorney), hereby moves the Court for a protective order pursuant to Title 18, United States Code, § 3509(d)(1) and for an Order permitting the filing of two impact statements under seal, for the reasons set forth below.

1. On October 13, 2010, defendant David Krause pled guilty to charge No. 2 in the Petition for Offender Under Supervision. Sentencing is scheduled for November 4, 2010.

2. Defendant Krause was sentenced on December 22, 1997, to a term of imprisonment of 120 months and 3 years supervised release for traveling in interstate commerce with seven minors with intent

to engage in sexual acts with them in violation of 18 U.S.C. § 2423(b). Krause was ordered to register as a sex offender and, as part of the conditions of supervision, prohibited from having unsupervised contact with minor children. On or about September 17, 2010, Krause had inappropriate and unsupervised physical contact with a minor.

3. A victim is defined as someone who has been "directly and proximately harmed as a result of a commission of a Federal offense" (18 U.S.C. § 3771(e)), or someone who has "suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime." 42 U.S.C. § 10607(e)(2). The victim of the supervised release violation and the victims of the 1997 offense are considered victims under these definitions.

4. The Government has complied with the Justice For All Act, 18 U.S.C. § 3771 (b), by notifying the 1997 victims and the supervised release violation victim about the charges and plea. The mother and the girlfriend of one of the 1997 offense victims have submitted impact statements outlining how sexual abuse of this victim by the defendant has negatively affected the victim and the victim's family. Section 3509(d) authorizes the filing under seal the name or any other information concerning a child. Furthermore,

Section 3509 (d)(1) requires the Government, the defendant and defense counsel, among other things to "keep all documents that disclose the name or any other information concerning the child in a secure place and shall disclose the documents only to person who by reason of their participation in the proceeding have a reason to know the information." Additionally, Title 18 United States Code § 3771 (a) (8) states that a victim has "the right to be treated with fairness and with respect for the victim's dignity and privacy." Since the both victim impact statements contain the name of the child victims as well as other identifying and personal information, the government requests the Court seal the victim impact statements and issue a protective order limiting disclosure. Furthermore, the government requests that any other victim impact statements received be allowed to be filed under seal and protected by limiting disclosure.

5. Pursuant to Title 18, United States Code, Section 3509 (d), it is further requested that the material and copies referred to in paragraph 4, shall not be disclosed to the media or any other person or entity except to those persons who, by reason of their participation in the proceeding, are entitled. Nothing shall prohibit a party from using the material in connection with the proceedings in this litigation, including appeal or any collateral enforcement proceedings.

6. It is further requested that copies shall not be provided to third parties except those employed or engaged for the purpose of this litigation, who shall also be bound by order of the court.

7. Finally, all copies should be returned to the United States Attorney's Office for appropriate destruction upon the conclusion of the case.

DATED: Buffalo, New York, October 27, 2010.

Respectfully submitted,

WILLIAM J. HOCHUL, JR.
United States Attorney

BY: s/PAUL J. CAMPANA
Assistant United States Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
(716) 843-5700, ext. 819
Paul.campana@usdoj.gov

TO: Kimberly A. Schechter, AFPD
U.S. Probation Office
Attn: Michael Quarantillo, USPO

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

97-CR-169-S

DAVID A. KRAUSE,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2010, I electronically filed, with the Clerk of the District Court, the **GOVERNMENT'S MOTION FOR PROTECTIVE ORDER AND ORDER TO SEAL** using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

Kimberly A. Schechter, AFD

U.S. Probation Office
Attn: Michael Quarantillo, USPO

s/KAREN BARONE